Supreme Court, U.S.
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OFFICE OF THE CLERK

No. _____

IN THE
Supreme Court of the United States

Fourth Appearance in Five Years

Jenelle D'Anne Beazley, Petitioner,
By and Through her Guardian Ad Litem
Dwight Theodore Beazley
v.
Superior Court of California,
23 Federal, State, and County Employees,
And the Other Parent, Respondents.

PETITION FOR A WRIT OF CERTIORARI ON THE MEMORANDUM OF THE United States Court of Appeals For the Ninth Circuit

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October 6, 2002

77 pp

QUESTIONS PRESENTED

1. If neither res judicata nor Rooker-Feldman bars relief in this second *Bivens*/Section 1983 action against six (6) new federal, state, and county government officials,[1] as found by the Ninth Circuit panel, has the panel **usurped its power** by violating this family's Seventh Amendment right to proceed to trial by jury on its separate **constitutional claims** for deliberate, and at other times, reckless denial of their liberty and property interests against those six officials, where there is both broad subject matter jurisdiction under Article III, Section 2 and valid causes of action (i.e. both *Bivens* and Section 1983), **irrespective** of the existence of any Title IV-D statutory or regulatory rights held by the family?

2. Has this Ninth Circuit panel misstated and ignored the rule of law for the **res judicata** doctrine, which requires, but in this second action lacks, a valid, final judgment, that was rendered "on the merits" from the first proceeding, by improperly excluding from this second civil rights action (June 2000) five (5) previously named defendants[2] in the first civil rights action (January 1997) whom were never served with a summons or complaint, never participated, and where no party or privy had their day in court, let alone, obtained an adjudication "on the merits"?

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[1] The six (6) new suable federal, state, and county employees are: Sharon Fujii, Eloise Anderson, Leslie Frye, Richard Williams, Daniel Lungren, and Michael Schumacher properly not barred from this second Section 1983 action by Rooker Feldman or res judicata as erroneously found by the district court but corrected by the Ninth Circuit.

[2] The five (5) defendants are: County of Orange, and county employees Capizzi, Sturla, Delarue, and the other parent, Church, improperly excluded by the panel from this second Section 1983 action for **res judicata** by simply being named in the first Section 1983 action; yet they were never served, participated, or litigated the first action and there was **no adjudication** "on the merits" and hence res judicata does not apply to them in this second action.

3. Has this Ninth Circuit panel misstated and ignored the rule of law for the **Rooker-Feldman** doctrine, which requires abstention *only* from review of state judicial decisions, by improperly excluding thirteen (13) newly named county & state executive officials[3] in this second civil rights action (June 2000) for their continuing wrongful SSA Title IV-D administrative decisions?

4. Has the Ninth Circuit panel **misrepresented** the family's civil rights action by falsely claiming that it "essentially seeks damages for the defendant's failure to [substantially] comply with Title IV-D", when, in truth and in fact, it has not, can not, and does not seek to enforce against the state IV-D agency the **system-wide** "substantial compliance" provisions [e.g. 42 U.S.C. §609(a)(8) and 45 CFR §305.20 (a) (3) (iv) (Oct. '95 to '99)] of the Act intended to benefit the Secretary; but rather the family has sued all 24 defendants individually for violation of the family's mutually exclusive and settled individual federal right under Title IV-D to a "review and adjustment" within 180 days [i.e. 42 U.S.C. 666 (a) (10), et seq. and 45 CFR §303.8 (Oct. '93 to Oct. '99)] of its **individual** child support account for the benefit of this family?

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[3] The thirteen (13) county and state executive employees are: County employees Steiner, Spitzer, Silva, Smith, Wilson, Hittelman, Ortiz, Wiles, Odeh, Balasuriya, Gutierrez, Mendez, and state employee White improperly excluded under **Rooker-Feldman** which should only apply if there were a reconsideration or redetermination of the state court decision as of 1993; and not, as here, liability for their separate wrongful Title IV-D administrative decisions since 1995 under color of law as a matter of policy, custom, or usage in failing to respond to fifty-nine (59) repeated complaints of constitutional violations of denial of due process and failure to provide mandated Title IV-D services for "review and adjustment" of this family's child support account as they were paid by the U.S. Treasury to perform under the approved state child support plan but repeatedly, recklessly, and, at other times, deliberately failed to do.

LIST OF PARTIES

The parties to the proceedings below are the petitioner, Jenelle D'Anne Beazley, daughter (age 17) by and through her guardian ad litem and natural father, Dwight T. Beazley, who soon for just cause (page 7) will be eligible to apply or move this Court to join this action as co-plaintiff and co-petitioner for his injuries, and the following twenty-five (25) defendants/respondents:

1. SUPERIOR COURT OF CALIFORNIA,
2. SHARON M. FUJII,
3. ELOISE ANDERSON,
4. LESLIE FRYE,
5. RICHARD A. WILLIAMS,
6. DANIEL E. LUNGREN,
7. CAROL ANN WHITE,
8. COUNTY OF ORANGE,
9. WILLIAM G. STEINER,
10. TODD SPITZER,
11. JAMES W. SILVA,
12. CHARLES V. SMITH,
13. THOMAS W. WILSON,
14. MICHAEL R. CAPIZZI,
15. JAN C. STURLA,
16. SUSAN M. DELARUE,
17. STEVEN G. HITTELMAN,
18. ALFREDO ORTIZ,
19. KATHY WILES,
20. LISA ODEH,
21. LIONEL S. BALASURIYA,
22. MARTHA GUTIERREZ,
23. MICHAEL SCHUMACHER,
24. DIANNA E. MENDEZ,
25. JERRI L. CHURCH [natural mother with default taken pursuant to FRCP 55 (a)]

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- **Actual Conflict with U.S. Supreme Court**

I. The family has enforceable constitutional claims and a Seventh Amendment right to trial by jury where there is broad subject matter jurisdiction under Article III, Section 2 against six (6) new federal, state, and local executives cited by the Ninth Circuit, whom it found are not barred by either Rooker-Feldman or res judicata from a *Bivens*/Section 1983 action irrespective of any enforceable federal statutory or regulatory right available to the family under Title IV-D 13

- **Actual Conflict with U.S. Supreme Court & 2nd, 7th, and 9th Circuits**

II. The family's Section 1983 action against four (4) county executive defendants and the other parent are not barred by Res Judicata because in the first action they did not participate, there was no adjudication of the issues or claims against them, and no "day in court" or "full or fair opportunity to litigate" for any party 16

- **Actual Conflict with U.S. Supreme Court and 9th Circuit**

III. Rooker-Feldman is not applicable to the subsequent administrative decisions of 13 executive officials, because no review or reconsideration of the original 1993 state child support order is ultimately required to judge their mutually exclusive wrongful conduct from 1995 to 1999 in failing to provide due process or equal protection of law by unlawfully evading the mandated "review and adjustment" of this family's child support account.....18

- **Actual Conflict with U.S. Supreme Court & 1st, 8th, 9th, and 10th Circuits**

IV. The family as a matter of settled law (1st, 8th, 9th, 10th Circuits & Supreme Court), has the Section 1983 right to enforce its Title IV-D individual federal rights as a direct beneficiary of 42 U.S.C. §666 (a)

(10), et seq. and 45 C.F.R. §303.8, irrespective of systemwide "substantial compliance" requirements of the IV-D state plan or audit penalties contained in Title IV-A of the Act [42 U.S.C. §609 (a) (8) and 45 C.F.R. §305.20 (a) (3) (iv) ('95-'99)] for the direct benefit of the Secretary as mandated by Congress at 42 U.S.C. §1320a-2 20

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* * * *

To the ***Honorable William H. Rehnquist,*** *Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the United States:*

Petitioner, Jenelle D'Anne Beazley ("daughter") by and through Dwight Theodore Beazley ("father"), her court appointed guardian ad litem (collectively "the family") respectfully prays, for the fourth time in five years,[4] that a writ of certiorari issue to review on the merits, or reverse and remand *per curiam,* all or part of the unpublished **Memorandum** of the United States Court of Appeals for the Ninth Circuit, filed in this second Section 1983 civil rights action on February 26, 2002.

The panel's decision **(i)** unlawfully ignores the family's surviving constitutional claims against six (6) defendants identified as suable and our Seventh Amendment right to trial by jury in "clear and indisputable" **usurpation of their power; (ii)** disregards 42 U.S.C. § 1320a-2 and actually conflicts with this Court's unanimous opinion in *Blessing v. Freestone, infra* and two supporting published circuit decisions (*Howe & Cowan, infra*) declaring our individual and enforceable federal right to "review and adjustment" of our child support account under **Title IV-D** statute and regulations; and **(iii)** negligently misstates and misapplies the Rooker-Feldman and res judicata doctrines as pertain to the remaining 17 executive defendants, and the other parent, on claims regarding both constitutional and IV-D rights.

Indeed, this case presents a deep civil rights issue with wide national impact upon the more than 19

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[4] State family law parentage case docket #97-5685 cert. den. October 20, 1997; Rule 20 habeas corpus docket #98-6469 cert. den. November 9, 1998; first civil rights action for violation of constitution and Title IV-D docket #98-8235 cert. den. April 26, 1999.

million Title IV-D families in the nation. This one family, through its persistence and unwavering belief in "equal justice under law" from this Court, has earned the right to be placed on the "discuss list" and to be thoroughly debated at conference to realize, at least, a *per curiam* result on its surviving constitutional (if not, Title IV-D) claims against these 24 defendants.

Orders, Judgment, & Memorandum Below

The **Amended Order** (5 pages) by U.S. District Court Judge Gary L. Taylor granting defendant Superior Court's and defendant Lungren's Motion to Dismiss for lack of subject matter jurisdiction and for failure to state a claim without leave to amend in violation of daughter's right under FRCP 15 (a) filed on November 30, 2000 is identified in the Appendix and is fully incorporated herein by said reference. (App., *infra*, 5A-8A)

The **Judgment of Dismissal** (1 page) of Entire Action by U.S. District Court Judge Gary L. Taylor as to all parties entered December 1, 2000 is identified in the Appendix and is fully incorporated herein by said reference. (App., *infra*, 10A)

The unpublished **Memorandum** (5 pages) by Ninth Circuit Judges Choy, Skopil and Ferguson filed February 26, 2002 is identified in the Appendix and is fully incorporated herein by said reference. (App., *infra*, 1A-4A)

The **Order** (1 page) denying rehearing by Ninth Circuit Judges Choy, Skopil and Ferguson filed May 14, 2002 is identified in the Appendix and is fully incorporated herein by said reference. (App., *infra*, 9A)

The **Letters** from the clerk (4 pages) granting an extension of time until September 11 and November 15, 2002 in which to file this petition. (App., *infra*, 33A-36A)

Jurisdiction

On February 26, 2002 the United States Court of Appeals for the Ninth Circuit filed an unpublished

Memorandum (App., *infra,* 1A-4A) in this case. On April 9, 2002 a timely petition for rehearing was served by the family and on May 14, 2002 an order (App., *infra,* 9A) was filed denying that petition. This petition has been filed within 90 days of that last order (Rule 13.1) plus the 30-day and 60-day letter extensions (App., *infra,* 33A-36A).

Petitioner hereby invokes federal jurisdiction in this Court under **28 U.S.C. § 1254 (1)** *"By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; ...".* The basis for subject matter jurisdiction in the district court were *Bivens* /Section 1983 causes of action for violation of petitioner's civil rights. [Article III, Section 2 and 28 U.S.C. § 1331]

U.S. Constitutional Provisions, Statutes, & Regulations

United States Constitution

Amendment I [1791] (App., *infra,* 11A)
Amendment V [1791] (App., *infra,* 11A)
Amendment VII [1791] (App., *infra,* 11A)
Amendment XIV [1868] Section 1 (App., *infra,* 11A)

U.S. Statutes

Title 42 § 1983. - Civil action for deprivation of rights (App., *infra,* 12A)

Title 42 § 666. Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement
(a) Types of Procedures required (1 to 9 not relevant)
(10) (A) (B) (C) (App., *infra,* 12A-14A; 14A-17A)

Title 42 § 1320a-2. Effect of failure to carry out State Plan (App., *infra,* 24A)

U.S. Regulations

45 C.F.R. § 303.8 Review and adjustment of child support orders. (App., *infra,* 17A-23A)

Statement of the Case

On January 31, 1997 plaintiffs, Dwight and Jenelle Beazley (father and daughter), in pro se, **filed but did not serve**, their first Section 1983 civil rights complaint [SACV 97-0085 GLT (SH)] for equitable relief and damages against 13 local judicial and executive officials, the superior court, the local county, and the other parent for violation of due process and several provisions of the Social Security Act (SSA) Title IV-D without specifically identifying the "review and adjustment" statute [42 U.S.C. §666 (a) (10), et seq.] although properly identifying the related regulations [45 CFR 303.8]. The complaint alleged *inter alia* that defendants had for three and one-half (3 1/2) years deliberately failed to perform a federally mandated "review and adjustment" of the family's fatally defective, unconstitutional, non-conforming, and erroneous child support order issued on July 6, 1993 in the [erroneous] amount of $150 per month without constitutionally required notice or hearing.

On February 18, 1997 that first case, without service of the summons or complaint and without hearing, was dismissed under Fed.R.Civ.P. 12 (b) (1) on the first cause of action by the district court for lack of subject matter jurisdiction. In **error** it asked the district court to declare the family's state child support order unconstitutional (vs. void) for lack of notice and hearing which it could not do. The remaining statutory and regulatory causes of action for violation of **Title IV-D**, and the implicating constitutional interests against the executive defendants were ignored, not addressed, and **not ruled upon** by either the district court or Ninth Circuit in a subsequent pro se appeal (97-55430) which affirmed the district court's dismissal order on May 20, 1998 for lack of subject matter jurisdiction (on the first cause of action) but said nothing about the remaining IV-D and constitutional claims against executive defendants for willful failure to obey federal law.

After dismissal of the first action and during the subsequent two and one-half (2 1/2) year period, the defendants **continued to violate Title IV-D** and deprive the

family of its liberty and property interests, without either due process or equal protection of law, by ignoring repeated written demands from the family for "review and adjustment" of its account. They unjustly prosecuted, convicted, and sentenced the father to serve two years in county jail for failure to pay the unconstitutional, non-conforming, and erroneous order without having the "ability to pay" – that is, amounts that it would be clear he **did not legally owe** had the defendants previously carried out their **legal duty** to "review and adjust" the order, account, and bill in conformance with the requirements of Title IV-D and state child support laws for the **benefit** of the family. The father was released from jail on October 6, 1999 after serving 16 months of a two-year sentence and, until a few days ago, has pursued state & federal habeas corpus remedies in the mistaken belief that it was necessary to obtain a favorable-termination of his state criminal case before joining the daughter in this second Section 1983 action for his injuries (see *Spencer*, infra).

On June 16, 2000 the family, recognizing that the daughter had a shorter statute of limitations period than the father, filed this second 47-page Section 1983 action (CR 1) against 24 government defendants and the other parent seeking equitable relief and damages for deprivation of the daughter's liberty (parent-child relationship) and property (child support) interests without due process or equal protection of law as guaranteed by the U.S. First, Fifth, & Fourteenth Amendments; and violation of her federal rights under Social Security Act, Title IV-D, Review & Adjustment of Support Orders, Section 466 (a) (10), et seq. of the Act [42 U.S.C. §666 (a) (10), et seq. and 45 C.F.R. § 303.8] under color of federal authority and/or color of state statute, regulation, policy, custom, or usage pursuant to causes of action under *Bivens*/Section 1983.

Before and since the father's release from jail, he has as always provided for the daughter who has been in his care 50% of the time since 1997; and paid since 1999 the contested child support ($150 per month) and since 2000

arrears ($100 per month) that he **legally does not owe** had the child support been "reviewed and adjusted" for true financial and parental time to conform to state guidelines despite his many demands to prevent the family's further impoverishment. The state, claiming as cause the filing of this second 1983 action, continues to severely limit the father's "ability to earn" by **wrongfully blocking** his professional licenses, without just or proper reason, to the extreme economic **detriment** of both the father and daughter. No conceivable scenario could be worse than the family's present situation unjustly caused by the defendants in violation of the family's civil rights.

There has **never been** a review or adjustment of the family's fatally defective child support order, account, or bill (since it was originated - July 6, 1993 - without notice or hearing) despite 11 attempts in the state courts from September 16, 1993 to November 13, 1997; and 51 written and 8 in-person demands and inquiries by the father upon federal, state, and local executive officials from January 26, 1995 to May 15, 1999. To the extreme **detriment** of the family, which account now **falsely** aggregates a balance in excess of **$16,800** that is not legally due.

The father's probation and constructive custody will expire on November 13, 2002 making his quest for habeas relief (28 U.S.C. §2254) **moot** accordingly, he plans to move this Court to join this action as co-plaintiff and amend the complaint to include his **Fourth Amendment** claim for malicious prosecution, false imprisonment, and denial of his liberty (i.e. parent-child relationship and to petition the government for redress of grievances) and property (i.e. child support & licenses) interests without procedural due process or equal protection of the law[5] - see *Heck v.*

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[5] ABA Family Law Quarterly, Vol. 33 No.1 (1999) 1999 Child Support Symposium - Child Support at a Crossroads: When the Real World Intrudes Upon Academics and Advocates, **("Many [states] violate federal law because they will only process upward modifications or requests made by custodial parents.")** Ronald K. Henry, Esq., partner in the

{...footnote continued on the following page}

Humphrey, 512 U.S. 477 (1994), as clarified by *Spencer v. Kemna*, 523 U.S. 1, 21 (1998), and *Albright v. Oliver*, 510 U.S. 266, 270, footnote 4, (1994) [citing Usher v. Los Angeles, 828 F.2d 556, 561-562 (CA9 1987)]

Judge Taylor, in his oral statements at the first and only federal hearing ever on November 27, 2000, while **admitting** ..."I don't know who's right or who's wrong in [this] matter ...", expressed the view without taking any evidence that "it appears" this action is a "phony" case and his "suspicion" the family is attempting to use the federal court as a device to "block" the state court that "cannot be litigated on and on forever". When, in truth and in fact, the family is trying to open the state court and executive department doors which were improperly slammed shut in **retaliation** for continuing true complaints by the family to various government agencies about the defendants repeated, continuing, and deliberate **violations of federal law**; that went "on and on ...." for at least six (6) years in failing to review or adjust the "phony" child support order, account, and bill upon the demand of the family within six (6) months, as mandated by Congress and DHHS.

In his written orders entered December 1, 2000 and January 26, 2001 Judge Taylor was **correct** in his view that the federal court cannot review or modify the substance of what he believes [in error or not] was a fully reasoned and considered state child support order by the family court in 1993. The family believes, however, federal courts are **obligated** to take charge of state domestic relation cases[6]

Washington, D.C. office of Kaye, Scholer, Fierman, Hays & Handler, LLP. [emphasis added]

[6] "By concluding, as we do, that the domestic relations exception encompasses only cases involving the **issuance** of a divorce, alimony, or child custody decree, we necessarily find that the Court of Appeals erred by affirming the District Court's invocation of this exception." *Ankenbrandt v. Richards*, 504 U.S. 689, 704 (1992) "While petitioner's claims do not involve a federal question or statute - the presence of which would strongly counsel against abstention, ... [citation omitted, emphasis added]" *Id.* at 717. This action, in its favor, does not ask the federal court

{...footnote continued on the following page}

which contain independent federal claims, against the **executive branch**, which arose after the state court decision and which the family never litigated[7] nor was required to litigate, in any state court at any time, and brought for the first time to the federal court in 1997.

On February 26, 2002 without directly criticizing the erroneous abstention and preclusion findings of Judge Taylor, the Ninth Circuit panel properly found and stated in its Memorandum that neither res judicata nor Rooker-Feldman bars suit against six (6) new federal, state, and local defendants in this second action for failing to properly train and supervise their staff in the performance of their Title IV-D duties. Nonetheless, the panel **misrepresented** that the family's action is one seeking to enforce the "substantial compliance" requirements of Title IV-D and seeking damages for "defendant's failure to comply with Title IV-D

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to issue such a decree and involves federal questions about wrongful executive conduct - in violation of the daughter's constitutional, statutory, and regulatory federal rights.

[7] Contrary to Judge Taylor's statements in the record, the family **never litigated** its federal civil rights claims with these defendants in state court. The transcript reflects Judge Taylor's mistaken beliefs and/or unsupported assumptions in many instances. Judge Taylor's **untrue** oral and written statements are noted here: "In the court's view, the matter has been fully litigated in the state court." (CR 85 - Reporter's Transcript, November 27, 2000 page 4) "Your client has brought this matter and fully litigated it in the state court and fully litigated these issues." (CR 85, page 5) "Any Title IV-D claims arising from the Superior Court order were already brought before the state court and decided." (CR 74, Amended Order to dismiss, page 3, ln 16-18) [emphasis added] On December 11, 2000 to rebut Judge Taylor's three erroneous statements, the daughter filed an uncontroverted request for judicial notice (CR 88 - 141 pages) of virtually the entire state appellate record **proving** these statements to be **false as no federal Title IV-D claims were ever litigated** or required to be litigated by the family in the state courts with these 24 defendants. Judge Taylor's finding was simply "beyond the bounds of reason" as argued by the family, which argument was implicitly accepted by the Ninth Circuit in finding that res judicata does not apply to six (6) newly named defendants in this second action at fn 1, *supra*.

and such causes of action are not recognized by Title IV-D" and cited *Blessing* as its authority.

The family strongly disagrees:

Blessing **held** that "Title IV-D does not give individuals a federal right to force a state agency to substantially comply with Title IV-D". The family **did not sue** to force the IV-D state agency (i.e. California Department of Social Services) to substantially comply with Title IV-D under *any* provision requiring "substantial compliance" in the Act. The family sued for violation of its well-settled **federal right** (both statutory and regulatory) to "review and adjustment" of its child support account by the responsible federal, state, and local officials within 180 days which cause of action is **fully recognized** by both *Bivens* and Section 1983 and not Title IV-D. See remarks of Justice O'Connor for the unanimous Court recognizing the possibility of such "**individual rights**" and leaving the door open to Section 1983 liability in fn 23, *infra*. See also *Cowan* fn 18 (CA9 1995) and *Howe* fn 20 (CA8 1993) *infra* specifically recognizing these enforceable individual rights to "review and adjustment" of child support.

Furthermore, while admitting these six defendants can be sued, the panel fails to consider that the family has remaining **constitutional interests** that were egregiously violated by these six (6) and the other eighteen (18) defendants which the family is entitled to pursue under *Bivens*/Section 1983 even if Title IV-D "review and adjustment" for sake of argument was not, in fact, a federally enforceable individual right.

Finally, the panel has improperly excluded five (5) defendants for res judicata and thirteen (13) more for Rooker-Feldman. Res judicata does not apply, as there was no service, no litigation, no day in court, and no adjudication on the merits in the first action in 1997; and Rooker-Feldman simply does not apply to wrongful executive branch decisions in violation of the family's constitutional, statutory, or regulatory rights.

The family believes the district court and Ninth Circuit were and are still obligated to take **jurisdiction** of alleged **tortious conduct** of all 23 federal, state, and local executive actors, and the other parent acting in concert with them, for their deliberate continuing failure to comply with a federal statute (§666 (a) (10), et seq.) and its highly detailed federal methods & procedures contained in the regulations (45 CFR 303.8) [App., *infra*, 17A-23A] for the six (6) years subsequent to and mutually exclusive from the issuance of that fatally defective state judicial child support order in 1993.

Defendants' conduct was authorized, predictable, and intentionally or recklessly deprived the father and daughter of their **liberty** and **property** interests, without due process or equal protection of law, in that (i) defendants made written agreements with the U.S. DHHS and the California Department of Social Services to provide congressionally mandated "review and adjustment" services at the request of either parent within 180 days; yet (ii) **invidiously discriminated** against the father's fifty-nine (59) requests because they classified him as a "noncustodial parent"; even though (iii) they were already paid to perform "review and adjustment" services by the U.S.Treasury at the request of either parent; and (iv) having received those funds; (v) still failed to perform the family's "review or adjustment" at any time during the six (6) year period of the complaint; in (vi) breach of their duty and contempt of Congress (see page 6, footnote 5, *supra*); under (vii) color of federal and state law, as a matter of policy, custom, or usage in violation of the family's civil rights as set forth in their causes of action pursuant to *Bivens*/Section 1983. That is the **crux** of this family's petition for certiorari.

Reasons for Granting the Writ

Summary of Legal Argument

The family contends [Rule 10 (c)] that the decision of the Ninth Circuit panel contained in their unpublished Memorandum (App., *infra*, 1A-4A) filed February 26, 2002 is

a **usurpation of power**, because it violates this family's right under the Seventh Amendment to a jury trial where there is broad subject matter jurisdiction for its constitutional claims under Article III, Section 2 and valid causes of action under both *Bivens* and Section 1983 and in further conflict with *Curtis* (1974); **irrespective** of any Title IV-D rights to "review and adjustment" of its child support account, for the deliberate, and at other times, reckless denial of its constitutionally guaranteed **liberty** (i.e. parent-child relationship and petition the government for a redress of grievances) and **property** (i.e. child support) interests, without due process or equal protection of law by all 24 non-judicial defendants; by improperly **ignoring** this Court's decisions in *Lewis* (1998) and *Zinnermon* (1990) because the executive defendants had ample time for four (4) years to deliberate the mandatory eight (8) "review and adjustment" tasks and duties contained in the regulations [45 CFR §303.8 (c) (App., *infra*, 19A-21A)] and had the authority to supply a hearing but repeatedly failed to do so despite fifty-nine (59) demands by the family. [see federal question 1, *supra* and Argument I, *infra*]

The family further contends [Rule 10 (a) & (c)] that the decision of the Ninth Circuit panel contained in the unpublished Memorandum (App., *infra*, 1A-4A) filed February 26, 2002 on the **Res Judicata** preclusion issue is in direct conflict with and misstates and misapplies the **rule of law** as expressed in three of this Court's decisions in *Hansberry* (1940), *Georgia* (1990), and *Martin* (1989); and is in further conflict with its own and two other circuit decisions – 2nd Circuit *St. Pierre* (2000), 7th Circuit in *Leaf* (1992), and 9th Circuit in *F.C.C.* (1990) resulting in the improper exclusion by the panel of five (5) previously named defendants who were never served a summons or complaint, never answered, and never participated in the first Section 1983 action filed in 1997 and which the family had no opportunity to litigate or adjudicate "on the merits" and therefore res judicata does not apply and the constitutional

issues attach to them. [see federal question 2, *supra* and Argument II, *infra*]

The family further contends [Rule 10 (a) & (c)] that the decision of the Ninth Circuit panel contained in the unpublished Memorandum (App., *infra*, 1A-4A) filed February 26, 2002 on the **Rooker-Feldman** abstention issue is in direct conflict with and misstates and misapplies the **rule of law** as expressed in two of this Court's decisions in *Feldman* (1983) and *Johnson* (1994) and the Ninth Circuit's own decision in *Gruntz* (2000) resulting in the improper exclusion of thirteen (13) state and county executive branch employees; for whom no review, reconsideration, or redetermination of the original state child support order as of 1993 is required and Rooker-Feldman has never been applied by any federal court to shield wrongful **administrative conduct** of executive branch employees in violation of a person's constitutional guarantees. [see federal question 3, *supra* and Argument III, *infra*]

The family further contends [Rule 10 (a) & (c)] that the decision of the Ninth Circuit panel as contained in its unpublished Memorandum (App., *infra*, 1A-4A) filed February 26, 2002 on the **Title IV-D issue** misrepresents this action which does not seek damages for defendants' failure to [substantially] comply with Title IV-D on a system-wide basis and, furthermore, disregards the will of Congress at 42 U.S.C. § 1320a-2 and is in direct conflict with and improperly states the **rule of law** as to enforcement by the family of their Title IV-D federal right to "review and adjustment" of their individual child support account as expressed, in whole or in part, in this Court's decision in *Blessing* (1997) and five (5) other supporting published circuit cases – that is, two prior decisions of the Ninth Circuit itself in *Withrow* (1991) and *Cowan*, (1995); a third decision of the First Circuit in *Albiston*, (1993); a fourth decision of the Eighth Circuit in *Howe*, (1993); and the reasoning of the Tenth Circuit in yet a fifth case in *Stanberry*, (1996). Their **misrepresentation** results in the **improper**

exclusion of all 24 non-judicial defendants on the Title IV-D issue. [see federal question 4, *supra* and Argument IV, *infra*]

Argument I.

The family has enforceable constitutional claims and a Seventh Amendment right to trial by jury where there is broad subject matter jurisdiction under Article III, Section 2 against six (6) new federal, state, and local executives cited by the Ninth Circuit, whom it found are not barred by either Rooker-Feldman or res judicata from a *Bivens*/Section 1983 action irrespective of any enforceable federal statutory or regulatory rights available to the family under Title IV-D

Section 1983 creates a cause of action for *anyone* whose **constitutional rights** have been violated by a person acting under color of state law and has no application to the federal government or its officers. A damage claim against a federal officer is controlled by *Bivens*, 403 U.S. 388 (1971) and its progeny which recognizes a cause of action for violations of the First, Fourth, Fifth, and Eight Amendments and federal laws. The Supreme Court has held that §1983 is **broadly available** when there is a state or local violation of the Constitution as here. Further, if the federal law in question creates a federal right, then the party may rely on *Bivens* or, if Congress has not foreclosed a §1983 remedy, on §1983 to enforce a particular federal law (e.g. specific "review and adjustment" provisions of Title IV-D) against a federal, state, or local official.

There are three major limitations on **constitutional claims** under 1983 – (i) negligent conduct cannot constitute a deprivation of due process; (ii) random and unauthorized (negligent or intentional) deprivation of liberty or property are not a violation of due process when there is an adequate

state postdeprivation remedy[8]; and (iii) the government has no duty to protect from privately inflicted harms.

The daughter sought **damages** in her last four causes of action by alleging that during the period January 26, 1995 to May 15, 1999 she was deliberately and, at other times, recklessly denied her **liberty** (i.e. parent-child relationship and petition the government for a redress of grievances) and **property** (i.e. child support) interests without due process or equal protection of law as the family made 51 written and 8 in-person demands (Complaint ¶ 64, page 29, ER 29) on her behalf upon **22** county, state, and federal **executive employees** to "review and adjust" the family's child support order, account, and bill as required by Title IV-D within 180 days for any material "inconsistency" (App., *infra*, 21A) with the state child support guideline to no avail. These defendants had either a policy of failing to train and supervise their staff or a custom of tolerating or acquiescing to the failure to respond to demands for "review and adjustment" from parents for the benefit of their children.

Moreover, even if arguendo the conduct of the **six** (6) defendants identified by the panel above are found by a jury to be only indifferent or reckless, such conduct has been recently held by the Supreme Court to state a **constitutional claim** in non-emergency situations, because the defendants had ample time to deliberate or even to care about the family's repeated demands over a protracted period (i.e. 1995 to 1999), as here - see *County of Sacramento v. Lewis*, 523 U.S. 833 (1998). The family has also stated a claim by showing that the conduct by those six (6) defendants was also authorized and predictable, repeated and protracted,

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[8] But this limitation does not apply if the family objects to the failure to provide a postdeprivation remedy [as here]; or the harms resulted from an official government policy [or custom, practice, and usage as here]; or there is an alleged violation of a substantive right [as here]; or the officials responsible could have provided a hearing to prevent the foreseeable harm [as here]; or there are inadequate state remedies [as here]. Erwin Chemerinsky, Federal Jurisdiction, 3rd Edition, © 1999, page 545

and the **executive employees** with the authority to supply a hearing failed to provide one even though they should have seen the need for such procedural protections - see *Zinnermon v. Burch*, 494 U.S. 113, 138-139 (1990).

In other words, if the constitutional violation is lack of adequate procedures, state procedures can remedy the infringement; however, if as here the constitutional violation is a lack of an **adequate justification** for the six (6) executive defendants' decision not to adjust, then the existence of state procedures is not relevant. A plaintiff "may invoke §1983 regardless of any state tort remedy that might be available to compensate him for the deprivation of these [substantive] rights." *Zinnermon, Id.* at 125.

Thus, the complaint states a constitutional claim for deliberate violations of <u>procedural</u> due process in not even attempting or causing a review of the child support; and a <u>substantive</u> violation of due process by not adjusting, or causing to be adjusted, the child support order, account, and bill pursuant to state guidelines. That claim is valid even if discovery reveals some or all the tasks defined in federal or state regulations were, in fact, followed by the above six (6) defendants. Furthermore, as neither the Superior Court nor former Attorney General or DSS officials answered the complaint, the daughter still has the right to amend her constitutional (1st, 5th, and 14th) and statutory claims (Fed.R.Civ.P. 15 (a)).

The Ninth Circuit panel has (by finding that the family sued for deprivation of liberty and property interests without due process or equal protection of the laws, and by finding that six (6) of the defendants are not barred from this suit by either res judicata or Rooker-Feldman) **usurped their power** and violated the family's **Seventh Amendment** right to pursue those constitutional claims in a jury trial where there is **broad subject matter jurisdiction** under Article III, Section 2 and **valid causes of action** under both *Bivens* and Section 1983 - see also *Curtis v. Loether*, 415 U.S. 189, 194 (1974). ("The Seventh Amendment does apply to actions enforcing statutory rights, and requires a jury trial

upon demand, if the statute creates legal rights and remedies, enforceable in an action for damages in the ordinary courts of law.").

Argument II.

The family's Section 1983 action against four (4) prior county executive defendants and the other parent are not barred by Res Judicata because in the first action they did not participate, there was no adjudication of the issues or claims against them, and no "day in court" or "full or fair opportunity to litigate" for any party

Res judicata (claim preclusion) applies *only* to parties and privies in a prior action; and requires a valid, final judgment, that was rendered "**on the merits**".

The **first reason** for not precluding these five (5) defendants[9] is that the defendants in the prior civil rights action were **never served** with a summons or complaint, **never answered**, and **never participated** in the first action or the appeal. Quoting from 3rd edition, Moore's Federal Practice, at [18] §131.40, page 131-129, "[a]s the Supreme Court stated in *Hansberry v. Lee*, '[i]t is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment in personam in a litigation in which he is not designated as a party or to which he has not been made a party by service of process.'[10] [emphasis added] See *Georgia vs. South Carolina*, 497 U.S. 376, 391-392 (1990) where South Carolina was never served and made no appearance in the prior action, just as with these five (5) defendants, and was not precluded by res judicata.

The **second reason** for not precluding these prior five (5) defendants is that a Fed. R. Civ. P. 12 (b) (1) dismissal of the first action for lack of jurisdiction (i.e. on the

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[9] County of Orange, and county employees Capizzi, Sturla, Delarue, and the other parent, Church.

[10] Hansberry v. Lee, 311 U.S. 32, 40 (1940)

first cause of action against the Superior Court to declare the child support order unconstitutional or to enjoin its enforcement in the second cause) is not a final judgment on the merits[11] of the remaining three causes of action for wrongful administrative (vs. judicial) conduct by the four (4) executive branch defendants, and the other parent acting in concert with them, [12] in violation of the family's rights under Title IV-D and the Constitution.

See *St. Pierre v. Dyer*, 208 F.3d 394, 399-401 (2nd Cir. 2000) (dismissal for lack of subject-matter jurisdiction is not adjudication on the merits and has no claim-preclusive effect) and *Leaf v. Supreme Court of Wis.*, 979 F.2d 589, 595 (7th Cir. 1992) ("[D]ismissal for lack of subject-matter jurisdiction under FRCP 12 (b) (1) and 41 (b) is not a decision on the merits and, therefore, constitutes dismissal without prejudice.") [emphasis added]

The **third reason** for not applying preclusion to these prior five (5) defendants is that the family *in pro se* had no "**full and fair opportunity to litigate**" their first action. A magistrate presented the first action to Judge Taylor for dismissal only four (4) days after the family filed in pro se, without notice or hearing to the family, or opportunity to amend, and without service of the summons or complaint, or answer by the defendants. Given these circumstances, we believe the family did not have a "full and fair opportunity to litigate" the issues or claims in the prior proceeding and was denied due process of law because it never had its "**day in court**". See *Martin v. Wilks*, 490 U.S.

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[11] Fed. R. Civ. P. 41 (b) – Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits. [emphasis added]

[12] Dennis v. Sparks, 449 U.S. 24 (1980) (Supreme Court **held** that private individuals who conspire, or act in concert, with government officials may be sued under §1983) and see Wyatt v. Cole, 504 U.S. 158 (1992) (Supreme Court **held** that private individuals sued under §1983 cannot claim immunity from suit)

755, 762 (1989) ("[E]veryone should have his day in court.") and *California v. FCC*, 905 F.2d 1217, 1245 (9th Cir. 1990) (claim preclusion no bar to subsequent action when party was not given full and fair opportunity to litigate claim in prior proceeding).

Argument III.

Rooker Feldman is not applicable to the subsequent Title IV-D administrative decisions of 13 executive officials, because no review or reconsideration of the original 1993 state child support order is ultimately required to judge their mutually exclusive wrongful conduct from 1995 to 1999 in failing to provide due process or equal protection of law by unlawfully evading the mandated "review and adjustment" of this family's child support account

The panel's conclusion that "**review**" of the 1993 state child support order is ultimately required and therefore the **Rooker-Feldman** abstention doctrine shields the wrongful administrative conduct of the remaining thirteen (13) county and state executive officials[13] is in error.

There are only **two questions** for a jury to answer neither of which involves review, redetermination, or reconsideration of the child support order as of 1993.

(1) Did the 22 executive employees redetermine, or cause to be redetermined, the amount of state guideline child support pursuant to the mandatory **eight (8) steps** [45 CFR §303.8 (c) (App., *infra*, 19A-21A)] required by federal regulations in response to the **59** demands of the family in the subsequent four (4) year period of time; and

(2) Did they adjust, or cause to be adjusted, the order, account, and bill within 180 days [45 CFR §303.8 (d) &

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[13] Fn 3, *supra*.

(e) (App., *infra,* 21A-23A)] or at any time pursuant to federal regulations for any "**inconsistency**" found in that redetermination based upon the state standard requiring a minimum change of the greater of $50 or 30%?

There simply will be no need by the district court to **review, reconsider, or redetermine** the [unconstitutional and erroneous] 1993 state child support order which is "frozen in time"; and no need whatsoever for a jury to ever know that it was, in truth and in fact, unconstitutional and erroneous at origination. Only judicial notice of the actual order and supporting Dissomaster™ calculation in 1993 will be offered to a jury at trial and **proof** that the order was **never** subsequently reviewed or adjusted (for 6 years) for material inconsistency [45 C.F.R. §303.8 (d) effective Oct 1, 1993 - Oct 1, 1999 (App., *infra,* 21A-22A)] with state guidelines as **mandated** by federal law within 180 days by the **executive** defendants, causing severe injury to the family in violation of Title IV-D and the Constitution.

As such, the panel's Memorandum is in **direct conflict** with the reasoning behind the Rooker-Feldman doctrine itself[14] and a recent **en banc** decision of the Ninth Circuit – *Gruntz* (2000)[15] that relied on the last **controlling** decision of the U.S. Supreme Court in *Johnson v. DeGrandy* (1994).[16] The Rooker-Feldman doctrine has never been applied to shield wrongful **administrative conduct** of executive branch employees, but only to review by federal

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[14] "A **crucial question** in this case, therefore, is whether the proceedings before the District of Columbia Court of Appeals were **judicial** in nature. This Court has considered the distinction between judicial and administrative or ministerial proceedings on several occasions." D.C. Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983). [emphasis added]

[15] In re Gruntz, 202 F.3d 1074 at 1079 (9th Cir. En Banc 2000) ("Since Feldman, the Supreme Court has declined opportunities to extend, or even apply, the doctrine." [see Footnote 3].

[16] Johnson v. DeGrandy, 512 U.S. 997, 1005-1006 (1994) ("But the invocation of Rooker/Feldman is **just as inapt here**, for, unlike Rooker or Feldman, the [13 remaining executive defendants were] not a party in the state court.") [emphasis added]

courts of **judicial decisions** by state courts involving the same parties.

Rooker-Feldman therefore does not apply to these thirteen (13) county and state executive officials who were not parties in prior federal or state proceedings, and they should be joined with the five (5) defendants improperly excluded for res judicata; and joined with the six (6) named by the Ninth Circuit for a total of 24 defendants subject to this *Bivens*/Section 1983 action.

Furthermore, the family will withdraw the first cause of action against the superior court as a state entity, in its judicial capacity, as barred by the **Eleventh Amendment** and dismiss it from the 25 defendants named in the second action.

Argument IV.

The family, as a matter of settled law (1st, 8th, 9th Circuits & Supreme Court), has the Section 1983 right to enforce its Title IV-D individual federal rights as a direct beneficiary of 42 U.S.C. §666 (a) (10), et seq. and 45 C.F.R. §303.8, irrespective of systemwide "substantial compliance" requirements of the IV-D state plan or audit penalties contained in Title IV-A of the Act [42 U.S.C. §609 (a) (8) and 45 C.F.R. §305.20 (a) (3)(iv)('95-'99)] for the direct benefit of the Secretary as mandated by Congress at 42 U.S.C. §1320a-2

The panel's conclusion that state child support plan "**substantial compliance**" provisions cited by Justice O'Connor in Title IV-A nullifies the family's separate Title IV-D statutory and regulatory "review and adjustment" rights against the above twenty-four (24) defendants is in **direct conflict** with two published decisions of this Ninth Circuit which it **did not address** in its Memorandum –

Withrow (1991)[17] and *Cowan* (1995). [18] It also conflicts with the finding of enforceable Title IV-A & D rights in a Section 1983 action in two other decisions of the First and Eighth Circuits – *Albiston* (1993), [19] *Howe* (1993), [20] cited in *Cowan*,

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[17] Withrow v. Concannon, 942 F.2d 1385 at 1387-88 (9 th Cir. 1991) ("We are not convinced, however, that the **standard for termination** of federal funding, ... is the appropriate one to define the **rights of applicants** and recipients of program benefits. The language of the federal regulations is unequivocal, and states that a decision "shall" or "must" be made within the specified number of days. ... From the standpoint of the applicants or recipients who are denied hearings and decisions within the time mandated by federal regulations, it is no comfort to be told that there is no federal remedy because the state is in "substantial compliance" with the federal requirements. ... **We hold**, ... that the regulations require **compliance, not 'substantial compliance.'** "). [emphasis added]

[18] Freestone v. Cowan, 68 F.3d 1141, 1148-1150 (9th Cir. 1995) ("As almost every court to consider the issue has concluded, **we hold** that Title IV-D clearly meets the three Wilder requirements as amplified in Suter. However, unlike "reasonable efforts" in the program at issue in Suter, **"substantial compliance" does not stand alone**. The statute and regulations under Title IV-D provide highly detailed requirements imposing specific duties on the states. The regulations also set forth highly detailed and specific procedures (including time limits, methods, and resources to use) regarding ... **review and adjustment of child support orders**. Reading both the statute and the regulations, states have a clear indication of the terms of the bargain they are entering into when they agree to accept AFDC funds."). [emphasis added]

[19] Albiston v. Maine, 7 F.3d 258 at 269 (1st Cir. 1993) ("In our view, the OCSE administrative enforcement scheme, authorizing penalties against participating states for "**substantial noncompliance**," seems intended to protect important **federal interests**, including prompt disbursement of federal funds to needy AFDC recipients as mandated by Congress, by ensuring that overall performance by the participating State does not fall below federally-prescribed levels. The private remedy afforded by S 1983, on the other hand, safeguards the individual AFDC **recipient's interests** in the timely receipt of the mandated federal benefits.") [emphasis added]

[20] Howe v. Ellenbecker, 8 F.3d 1258 at 1263 (8th Cir. 1993) (finding regulations reiterating the statutes plain directives requiring that participating states *must* inter alia periodically **review and adjust** child support orders) and citing Wright v. City of Roanoke ... , 479 U.S. 418, 423 (1987) (finding a federal agency's authority to audit [for **substantial**

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and is further supported by the dicta of the Tenth Circuit in *Stanberry* (1996);[21] and substantially effects a rule of national application for determining a federal right, and conflicts with an amendment by Congress to the SSA codified at 42 U.S.C. §1320a-2 (1994) (App., *infra*, 24A),[22] which is not contradicted by the last controlling Title IV-D decision of the U.S. Supreme Court in *Blessing v. Freestone* (1997).[23]

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compliance] and withhold federal funds **insufficient** to show Congress intent to preclude section 1983 actions).

[21] Stanberry v. Sherman, 75 F.3d 581, 583-584 (10th Cir. 1996) (citing 42 U.S.C. 1320a-2 (October 20, 1994) "[I]n all pending and future actions brought to enforce a provision of the Social Security Act, such provision is **not to be deemed unenforceable** because of its inclusion in a section of the Act requiring a State plan or specifying the required contents [i.e. reasonable efforts or substantial compliance] of a State plan.") [inference and emphasis added] (see also App., *infra*, 24A)

[22] Which disavowed the approach taken in Suter v. Artist M., 503 U.S. 347 (1992) allowing **a private right of action to enforce** provisions of the SSA (e.g. "review and adjustment" of child support orders) that require state and local plans [including substantial compliance] for meeting federal mandates. Chemerinsky, *supra* at 533

[23] Blessing v. Freestone, 520 U.S. 329, 341, 345, and 348 (1997) (holding "that Title IV-D does not give individuals a federal right to force a **state agency** to substantially comply with Title IV-D. We do not foreclose the possibility that **some provisions** of Title IV-D **give rise** to **individual rights**. Title IV-D contains **no private remedy**– either judicial or administrative–through which aggrieved persons can seek redress. Furthermore, up to 25 percent of eligible children and custodial parents can go without most of the services enumerated in Title IV-D before the Secretary can trim a State's AFDC grant. The lower court did not separate out the **particular rights** it believed arise from the statutory scheme, and we think the complaint is less than clear in this regard. To the extent that Title IV-D may give rise to individual rights, therefore, we agree with the Court of Appeals that the Secretary's oversight powers **are not comprehensive enough** to close the door on §1983 liability."). [emphasis added] The Beazleys complaint, in contrast, is clear and relies on *Howe*, *supra* at fn 20 and *Cowan*, *supra* at fn 18 that specifically held that both the statute (§666 (a) (10)) and the regulations (§303.8), taken together, containing the "review and adjustment" provisions are a direct benefit to the family and created enforceable federal rights in a Section 1983 action vs. the substantial compliance provisions of the act (e.g. 42 U.S.C. §609 (a) (8) and 45 C.F.R. §305.20 (a) (3) (iv)) which are merely systemwide

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To ensure that there would be **no confusion** over the rights of individuals to seek Section 1983 relief when the state child support plan is contrary to federal statutes, or if the state **blatantly fails to comply** with the state plan as in the Beazleys' case, Congress passed legislation in 1994 now codified as 42 U.S.C. §1320a-2 "to allow a **private right of action** to enforce provisions of the Social Security Act that require state and local plans for meeting **federal mandates**. The Congressional action is significant in preserving 1983 as an enforcement mechanism for key provisions of the Social Security Act."[24] The family should be permitted to amend the complaint to plead this additional statutory right, which it did not learn of until after filing its second complaint.

Therefore, as a matter of existing **settled law** by the 1st, 8th, and 9th Circuits, and supported by the dicta of the 10th circuit, this Court should explain why the above twenty-four (24) defendants should not be subject to prosecution for violation of the family's individual **Title IV-D rights** to "review and adjustment" under 42 U.S.C. §666 (a) (10), et seq. and 45 C.F.R. §303.8 as found in <u>both</u> *Cowan* at 1149 & *Howe* at 1263, notwithstanding the "substantial compliance" provisions contained in **Title IV-A** of the Act [42 U.S.C. §609 (a) (8)] and regulations [45 C.F.R. §305.20 (a) (3) (iv)] in addition to the constitutional claims discussed in **Argument I**, above.

Conclusion

Should this Court find in favor of the above four arguments, this petition for certiorari should be granted and <u>either</u> a *per curiam* decision issued reversing and remanding this second civil rights case on-its-face to proceed with full subject matter jurisdiction to adjudicate the family's allegation that it was denied its liberty and property

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<u>indirect benefits</u> for all families and of direct benefit only for the Secretary of DHHS.

[24] Chemerinsky, *supra* at 533

interests without due process or equal protection of law, denied its right to petition the government for redress of grievances, denied the parent-child relationship, and denied its Title IV-D right to "review and adjustment" of its individual child support order, account, and bill by 23 federal, state, and county defendants and the other parent, with leave to amend the complaint as permitted by law; or set the case for full briefing and oral argument upon the merits of those interests, issues, rights, claims, and causes of action.

Epilogue

Fathers love their children and to the best of their ability usually act in the family's best interest and seldom abandon or neglect them. Mothers, far more than fathers, abandon their relationships and are first to file legal actions in a **no fault** legal environment knowing the family court will more often than not award them custody and child support and label the father as a "noncustodial parent" (NCP). Congress, under pressure from special interest groups, amended Title IV-D that had been written in 1975 to address AFDC reimbursement from "absent" welfare parents by changing that word to "noncustodial" in order to include a much broader category of non-welfare, self-sufficient, and present (vs. absent) parents. [Pub. L. 104-193, Sec. 395(d)(2)(E), August 22, 1996]

The family court in a significant number of cases issues default child support orders sometimes rendered without due process based upon false custodial parent financial declarations submitted without proof, without service of process, where the court imputes erroneous or even worse non-existent income to the NCP, without reference to their or the children's needs, or ability to earn or pay;[25] and then the court deliberately abuses discretion and

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[25] Of the $14.4 billion in child support arrears owed in California by 834,908 NCPs with an average arrears of $17,247 and a monthly median child support order ranging from $276 to $285, **$8.1 billion** (or 56%) is

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miscalculates[26] the order if the guideline amount appears low by not conforming it to state child support guidelines or rebutting it with findings in violation of federal law in order to increase federal subsidies to their family court operating budgets, as here. Even worse, in many states, visitation time is arbitrarily limited because the courts know that if the NCP's visitation time is reduced their child support will be more as will the court's share of federal financial incentives, as here.

Special interest groups then demonize these NCPs if they object to this unconstitutional process, nonconforming order, or fail to pay the resulting bill through no fault of their own by labeling them "deadbeat parents" even though they continue to fully provide necessaries for their children while in their care, as here.[27]

The District Attorney, then acting as Title IV-D administrator vs. prosecutor, with even larger financial participation and incentives from the federal government under Title IV-D, ignores the NCP's legitimate demands for "review and adjustment" of their order and account and continues to falsely bill them while charging them criminally with contempt and "neglect" for non-payment

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owed by NCPs with almost **no ability to pay**: those with annual incomes less than $5,000 per year. See Elaine Sorensen and Chava Zibman, Estimating How Much of California's Child Support Arrears Are Collectable Using State-Wide Data Bases, (October 2001), page 36, Urban Institute, Washington, DC submitted at the request of the California legislature.

[26] "In other words, at the lower end of the income spectrum, awards are **not reflective of current ability to pay** and **do not seem to be in line with California's existing support guidelines**." [emphasis added] Pursuing Justice: A Strategic Approach To Child Support Arrears In California A paper submitted to the California Department of Child Support Services (May 2002) by Paula Roberts of the Center for Law and Social Policy, Washington, DC, at page 25.

[27] See Radio Address of President Clinton, The White House, June 17, 2000 ("The fact is, many fathers can't provide financial and emotional support to their children, not because they're **deadbeat**, but because they're **dead-broke**.") [emphasis added]

(vs. failure to provide necessaries) previously reserved *only* for "absent" parents without performing their duty to "review or adjust" the unconstitutional and/or non-conforming order, account, and bill, as here.

Sadly, in many cases the money that is ultimately **extorted** from the NCP, without due process or equal protection of law, is never applied to the necessaries of life for the children it is supposed to currently benefit, as here. The custodial parent often diverts those funds for their personal benefit (e.g. savings, stock market, new cars, weekend getaways, clothes, etc.) or abuse (e.g. drugs or alcohol), because there is no requirement for accountability or proof of actual child support expenditures for the children to show an actual improvement in their standard of living.

In stark contrast the NCP, who is unconstitutionally billed for lack of hearing and/or process, is deprived of licenses without hearings, and is then incarcerated for *alleged* "neglect" or contempt for non-payment of those unconstitutional bills, ultimately lose his home, job, licenses, reputation, career, and, worst of all, his parent-child relationship while in wrongful custody, and has no funds left to hire an attorney to remedy this constitutional tort, as here.

Setting child support levels and drafting draconian collection measures for these false orders and bills is a political process conducted largely by groups that financially benefit from family separation. Parents are largely excluded. In about half the states, the guidelines used to set child-support levels are devised not by the legislature, but by courts and enforcement agencies, and in all states the courts and enforcement agencies play a dominant role in setting the guidelines.[28]

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[28] Stephen K. Baskerville, Ph.D., Professor of Political Science, Howard University, Washington, DC 20059, Liberty Magazine, (June 2002), page 29, citing Laura W. Morgan, Co-Chair, ABA Child Support Committee,
{...footnote continued on the following page}

Under the Constitution's separation of powers, we do not permit courts and district attorneys (functioning as IV-D administrators) to make laws they interpret and enforce, since this would create an obvious **conflict of interest,**[29] but that is exactly what happens when both judicial and executive branches **collude and refuse** to follow mandated child support "guidelines" and ignore requests from either parent for "review and adjustment", as here.

If we can't trust our own government to uphold the **rule of law**, in state or federal court, the concept of **parity** espoused by the Chief Justice becomes moot. If the state judiciary and executive branches **collude** for their own financial gain, perpetuated by their participation and associated incentives in the Title IV-D program to the **detriment** of families, then the good intentions of Congress in passing Title IV-D to benefit families (mother, father, and child) has been destroyed.

What we have instead is a lawless government program **"out of control"** with **fraud** and **corruption**[30] committed in the name of our children and **financial terrorism** inflicted upon one of their parents thru draconian collection of false orders, accounts, and bills with coercive threats, or actual prosecution and jail, not unlike IRS abuse.[31] All done to **extort** *alleged* child support that would have never been due in the first instance if the process that was **guaranteed** by our **Constitution** had been rendered or the Title IV-D statute and regulations for use of guidelines and subsequent "review and adjustment" followed or

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Child Support Guidelines: Interpretation and Application (New York: Aspen Law and Business, 1998), Table 1-2, p. 1-12.

[29] *Id.* at 29.

[30] William H. Rehnquist, The 1998 Year-End Report of the Federal Judiciary ("...the Long Range Plan recommends that federal courts should only have criminal jurisdiction in five types of cases: ... (4) serious high level or widespread state or local **government corruption**; ..."). [emphasis added]

[31] Compare false tax (vs. child support) bills - Inside the IRS, Lawless, Abusive and Out of Control. Newsweek, October 13, 1997.

enforced, as here.

If we expect the private sector to issue truthful and accurate financial statements with proper disclosure, then we must expect the same from public officials charged with maintaining accounts and issuing child support bills and statements.

Public officials who act **outside the law** by knowingly and willfully maintaining false accounts; and issuing false child support bills and statements; and by **evading** lawful "review and adjustment" of those accounts; threatening or blocking licenses, seizing property, prosecuting, and incarcerating caring, present (vs. absent), and providing parents for either *alleged* neglect or contempt for non-payment of those false accounts, bills, and statements; and whom then **certify** those false amounts under penalty of perjury to the U.S. Treasury for reimbursement of their operating expenses; and then seek additional incentives for false collections under the Title IV-D program for their own benefit commit the same kind of **financial fraud** that private sector financial officers have been arrested for in recent weeks [see 18 U.S.C. §1001 (a)].

This family has indicated from the very beginning of the first action in 1997, and again in this second action in 2000, that upon a finding by a jury that the conduct of the defendants in this case was **willful** that it would ask the federal court to refer this case to the DOJ for criminal prosecution under 18 U.S.C. §242. Maybe then the country would learn of the devastating **harm** inflicted with impunity by all of the defendants in this case upon this family and thousands of others to the **detriment** of our children and the nation.

Perhaps this Court will finally find after **four attempts**[32] by this family in this Court since 1998 for justice,

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[32] See Erwin Chemerinsky, The Anti-Civil Rights Court, California Lawyer (August 2001) p. 21 ("There is a consistent and disturbing theme to the Rehnquist Court's decisions in recent years: Civil rights plaintiffs lose. The result has become strikingly predictable. Almost invariably the

{...footnote continued on the following page}

that the district court does, in truth and in fact, have broad subject matter jurisdiction over the family's **constitutional interests** under Article III, Section 2 and its inferred constitutional causes of action under *Bivens* for money damages under the First, Fourth, and Fifth Amendments; and the family also has a legitimate, colorable, and enforceable Section 1983 civil rights claim for injunctive relief and damages against the defendants under the more narrower federal question jurisdiction provided by statute (28 U.S.C. §1331) for violation of the Fourteenth Amendment. "The very purpose of 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights, ...". *Mitchum v. Foster*, 407 U.S. 225, 242 (1972).

* * * *

God save this honorable Court to take the right, just, moral, and final appellate action in this case.

Respectfully submitted,
The Beazley Family

/s/ D. T. Beazley
Father and Guardian Ad Litem

/s/ Jenelle Beazley
Daughter and Petitioner

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plaintiff loses in a 5-to-4 decision. This trend might be overlooked because the Court has used a number of different approaches to justify its conclusions, and the cases have involved several statutes. But the overall pattern is clear: The Court's conservative majority almost always finds a way to rule against civil rights plaintiffs.").

Executed this Sixth Day of
October in the Year of Our Lord
Two Thousand and Two

It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. [citation omitted] *And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter.*

Prince v. Massachusetts, 321 U.S. 158, 166 (1944)

Whenever the family is self-sufficient, it should be left to act on its own; an excessive intrusiveness on the part of the State would prove detrimental, to say nothing of lacking due respect, and would constitute an open violation of the rights of the family.

Letter to Families from Pope John Paul II, given in Rome, at Saint Peter's, on 2 February, the Feast of the Presentation of the Lord, in the year 1994, the sixteenth of his Pontificate.

In Memoriam
Anne J. Beazley
October 6, 1912 - March 9, 2002

APPENDIX

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
(filed February 26, 2002)
No. 01-55576
D.C. No. CV-00-00593-GLT

JENELLE D'ANNE BEAZLEY,
Plaintiff – Appellant,

v.

SUPERIOR COURT OF THE STATE OF CALIFORMA; SHARON M. FUJII; DAN LUNGREN; COUNTY OF ORANGE; WILLIAM G. STEINER; TODD SPITZER; JAMES W. SILVA; CHARLES V. SMITH; THOMAS W. WILSON; MICHAEL R. CAPIZZI; JAN C. STURLA; SUSAN M. DELARUE, STEVEN J. HITTELMAN; ALFRED0 ORTIZ; KATHY WILES; LISA ODEH; LIONEL S. BALASURIYA; MARTHA GUTIERREZ; MICHAEL SCHUMACHER; DIANA E. MENDEZ; CAROL ANN WHITE; ELOISE ANDERSON; LESLIE FRYE; RICHARD WILLIAMS,

Defendants – Appellees.

MEMORANDUM*

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

APPENDIX

Appeal from the United States District Court
for the Central District of California
Gary L. Taylor, District Judge, Presiding

Submitted November 27, 2001**

Before: CHOY, SKOPIL, and FERGUSON, Circuit Judges

Jenelle D'Anne Beazley ("Jenelle"), by and through Dwight Theodore Beazley ("Beazley"), her father and guardian ad litem (collectively "the Beazleys"), appeal the district court's dismissal of their complaint, which alleged that the defendants deprived Jenelle of her liberty and property rights without due process or equal protection of the laws and violated her rights under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et. seq. On appeal, the Beazleys argue that: 1) their notice of appeal was timely because the sixty-day filing period applied; and 2) the district court erred by dismissing their complaint. We agree with their first argument, but reject the second.

I. Appellate Jurisdiction

The sixty-day filing period of Fed. R. App. P. 4(a) applies whenever the plaintiffs allegations arise out of government activity and a defendant officer of the United States: was acting under color of office; *or* was acting under color of law or lawful authority; *or* is represented by a government attorney. Wallace v. Chappell, 637 F.2d 1345, 1348 (9th Cir. 1981) (en banc) (per curiam). The Beazleys' allegations against Defendant-appellee Sharon Fujii arose out of government activity and her actions or omissions occurred under the color of her office. Therefore, the sixty-day filing period applied and the Beazley's notice of appeal

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2). Accordingly, we deny the Beazleys' motion for oral argument.

was timely filed. We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291.

II. Dismissal of the Complaint

In 1997, the Beazleys filed a complaint in district court against several defendants, including eight of the defendants named in the instant case. The district court dismissed the 1997 case for lack of jurisdiction based on the Rooker-Feldman doctrine. In the instant case, all of the claims that the Beazleys raise against those eight defendants are barred by the res judicata doctrine because they were or could have been raised in the 1997 case. See Rein v. Providian Fin. Corp., 270 F.3d 895,898-99 (9th Cir. 2001).

The res judicata doctrine does not apply to the defendants who were not named in the 1997 action. However, where the same claims are raised against the defendants who were named in the 1997 case and against those that were not, the same jurisdictional barriers exist. All of the Beazleys' claims, with the exception of those discussed infra, ultimately require review of the state court's decisions in the original paternity case or the litigation which stemmed from it. Therefore, the claims are barred by the Rooker-Feldman doctrine. See Ahmed v. Washington, 276 F.3d 464,467 (9th Cir. 2001) (stating that the Rooker-Feldman doctrine provides that a federal district court lacks subject matter jurisdiction to decide a case that would require it to review the decision of a state court, even if the case presents federal constitutional issues).

The Beazleys' claims against Fujii and their claim that Eloise Anderson, Leslie Frye, Richard Williams, Daniel Lungren, and Michael Schumacher failed to properly train and supervise their staff in the performance of their Title IV-D duties are not barred by the res judicata doctrine, nor are they barred by the Rooker-Feldman doctrine. However, the Beazleys essentially seek damages for the defendant's failure to comply with Title IV-D and such causes of action

are not recognized by Title IV-D. See Blessing v. Freestone, 520 U.S. 329 (1997). Because Title IV-D does not grant individual parents and children the right to enforce the substantial compliance requirements, the district court properly dismissed these claims.

III. Default Judgment

During the pendency of this appeal, Carol Ann White filed a motion asking this court to set aside the default judgment against her. We construe her motion as a motion for remand to the district court. Cf. Crateo, Inc. v. Intermark. Inc., 536 F.2d 862, 869 (9th Cir. 1976). Insofar as the claims against White are barred by the Rooker-Feldman doctrine, the district court lacked subject matter jurisdiction and the default judgment is void. See Watts v. Pinckney, 752 F.2d 406,409 (9th Cir. 1985); Gould v. Mutual Life Ins. Co., 790 F.2d 769, 772 (9th Cir. 1986). White is entitled to relief from the judgment pursuant to Fed. R. Civ. P. 60(b)(4).

The district court's judgment and order denying the Beazleys' motion for reconsideration are AFFIRMED and White's motion for remand is GRANTED.

* * * *

APPENDIX

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION
(Filed November 30, 2000)
Case No. SA CV OO-593-GLT (ANx)
Judge Gary L. Taylor

JENELLE D'ANNE BEAZLEY, by and through her Guardian Ad Litem DWIGHT THEODORE BEAZLEY,
Plaintiff,
vs.
SUPERIOR COURT OF CALIFORNIA, et al.
Defendants.
_____/

AMENDED ORDER GRANTING DEFENDANT SUPERIOR COURT'S MOTION TO DISMISS AND GRANTING DEFENDANT LUNGREN'S MOTION TO DISMISS

The Court GRANTS without leave to amend both Defendant Superior Court of California's Motion to Dismiss and Defendant Lungren's Motion to Dismiss, and, on its own motion, dismisses the case as to the remaining defendants.

This action arises from a 1993 Superior Court order requiring Dwight Theodore Beazley to pay certain amounts in child support and granting him specified visitation rights regarding his now teenage daughter, Jenelle D'Anne Beazley. Mr. Beazley made numerous unsuccessful attempts to have the Superior Court's Order modified and to obtain relief from judgement [sic]. As a result, the Superior Court declared Mr. Beazley a vexatious litigant in an order dated September 14, 1994.

APPENDIX

Mr. Beazley brought suit in this Court in 1997, alleging many of the same claims he brings in the current action as the guardian ad litem for his daughter. In the 1997 action, Mr. Beazley alleged violations of the Social Security Act Title IV-D, codified as 42 U.S.C. §§ 651-679, as well as due process claims under §§ 1983 and 1981, and sex discrimination claims under § 2000h-2. Mr. Beazley contended the Superior Court improperly calculated the amount of child support for which he is liable, and he contended the court's procedures were otherwise flawed. Mr. Beazley also alleged he was wrongfully prosecuted for contempt of the Superior Court's child support orders. Mr. Beazley's complaint was dismissed under the Rooker-Feldman doctrine as an attempt to re-litigate matters from the underlying state court action. The Ninth Circuit affirmed this Court's ruling.

The current Complaint, brought by Mr. Beazley purportedly as guardian ad litem of Jenelle Beazley, also alleges violations of the Social Security Act Title IV-D and violations of due process. Eight of the Defendants in the current action were Defendants in the 1991 action. The factual allegations in the Complaint are substantially similar to those in the 1997 Complaint.

A. The Rooker-Feldman Doctrine

The Rooker-Feldman doctrine prohibits a federal court from hearing a challenge to a state court decision arising from judicial proceedings, even if those challenges allege the state court's actions were unconstitutional. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486 (1983). The doctrine applies when the issue before the federal court is "inextricably intertwined" with the claim asserted in the state court proceeding. Penzoil V. Texaco Co. Inc., 481 U.S. 1, 25 (1987) (Marshall, J., concurring) (cited in Catz v. Chalker, 142 F.3d 279, 293 (6th Cir. 1998)). However, a federal court may entertain a collateral attack on a state court judgement [sic] which is alleged to have been obtained through fraud, deception, accident, or mistake. Resolute Insur. Co. v. .State of North Carolina, 397 F.2d 586,

589 (4th Cir.1968) (cited in Catz, 142 F.3d at 294). Plaintiff argues this case is not barred by the Rooker-Feldman doctrine because, since the 1997 action, the Supreme Court has stated some Title IV-D provisions of the Social Security Act may give rise to individual rights. See. Blessing v. Freestone, 520 U.S. 329 (1997). Plaintiff argues this Court may rule on federal statutory rights under Title IV-D to review and adjust the Superior Court's child support order. Opposition to Superior Court's Motion, 4:12-14. However, the record indicates Mr. Beazley appealed the child support order numerous times, and the state court upheld the order. The ruling does not change the fact the Ninth Circuit has agreed the Rooker-Feldman doctrine prohibits this Court from reviewing or modifying the Superior Court's child support orders. Any Title IV-D claims arising from the Superior Court order were already brought before the state court and decided.

Mr. Beazley alleged in state court, and again in the 1997 federal action, that Ms. Church, Plaintiff's mother, submitted fraudulent documents to the superior court which the court relied on to determine what Mr. Beazley owes in child support. The state court ruled against Mr. Beazley on his fraud contention, and upheld the order. The same fraud contention was fully presented to the state court. The same claim, again before this Court, is barred by the Rooker-Feldman doctrine as held in the prior action, and also by res judicata.

Mr. Beazley's alleged inability to assert his claims in state court because he could not afford the fee for transcripts does not avoid the Rooker-Feldman doctrine. Plaintiff's causes of action are not based on the allegation that Mr. Beazley was unable to raise his federal claims in state court. In fact, Plaintiff asserts Mr. Beazley "repeatedly raised" federal constitutional issues in his petition for a rehearing of the Superior Court order. Opposition to Superior Court's Motion, 4:1-4.

This Court does not have jurisdiction to reconsider the Superior Court's child support order and its method and

procedure for determining the amount of child support Mr. Beazley owes. All of plaintiff's claims are barred by the Rooker-Feldman doctrine.

B. Eleventh Amendment Immunity

The Eleventh Amendment bars suits against a state, and any "arm of the state," as well as its instrumentalities and agencies. Francheschi v. Schwartz, 57 F.3d 828, 831 (9th Cir. 1995) (per curiam). A superior court is an "arm of the state." Id. (citing Greater Los Angeles v. Zolin, 812 F.2d 1103, 1110 (9th Cir.1987)). Defendant Superior Court is immune from Plaintiff's claims against it. Plaintiff's reliance on the dissenting opinion of a minority of Supreme Court Justices is insufficient to remove Defendant Superior Court's Eleventh Amendment immunity.

C. Claims against Defendant Lungren

Title 45 of the Code of Federal Regulations, Section 302.12 requires the establishment of a separate organizational unit to administer Title IV-D of the Social Security Act. In California, this unit is the Department of Social Services. Although the Department may contact the Attorney General's Office to correct compliance problems, this connection does not implicate the State Attorney General. Although the Attorney General supervises the county district attorneys' offices, his law enforcement duty is discretionary, not mandatory. See State of California ex rel Dept. of Rehabilitation v. Superior Court, 137 Cal. App. 3d 282 (1982). Therefore, Defendant Lungren cannot be held liable for claimed due process violations by the District Attorney.

D. Disposition

The motions to dismiss are granted without leave to amend. It is evident to the Court that the defects in Plaintiff's claim apply to the other defendants as well. Therefore, on its own motion, the Court will dismiss the entire action as to all defendants.

DATED: November 30, 2000.

/s/ Gary L. Taylor
UNITED STATES DISTRICT JUDGE

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
(filed May 14, 2002)
No. 01-55576
D.C. No. CV-00-00593-GLT
Central District of California
Santa Ana

JENELLE D'ANNE BEAZLEY,
Plaintiff – Appellant,

v.

SUPERIOR COURT OF THE STATE OF CALIFORMA, et al.,

Defendants – Appellees.

ORDER

Before: CHOY, SKOPIL and FERGUSON, Circuit Judges.

The panel, as constituted above, has voted unanimously to deny the petition for rehearing. The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on the petition for rehearing en banc. Fed. R. App. P. 35.

The petition for rehearing and the petition for rehearing en banc are hereby DENIED.

* * * *

APPENDIX

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION
(Entered December 1, 2000)
Case No. SA CV OO-593-GLT (ANx)
Judge Gary L. Taylor

JENELLE D'ANNE BEAZLEY, by and through her Guardian Ad Litem DWIGHT THEODORE BEAZLEY,
Plaintiff,
vs.

SUPERIOR COURT OF CALIFORNIA, et al.
Defendants.
_____/

JUDGMENT OF DISMISSAL OF ENTIRE ACTION

The Court orders that Judgment of dismissal be entered as to the entire action as to all defendants.

DATED: November 30, 2000.

/s/ Gary L. Taylor
UNITED STATES DISTRICT JUDGE

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APPENDIX

US Constitutional Provisions, Federal Statutes, & Regulations Relied Upon

United States Constitution

Amendment I [1791]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment V [1791]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VII [1791]

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment XIV [1868] Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the

privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Statutes

Title 42 § 1983. - Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia

Title 42 § 666. Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement [P.L. 100-485 effective October 13, 1990]

(a) Types of procedures required

- In order to satisfy section 654(20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the

State administers under this part: [1 to 9 omitted]

- **(10)**

- **(A)** Procedures to ensure that, beginning 2 years after October 13, 1988, if the State determines (pursuant to a plan indicating how and when child support orders in effect in the State are to be periodically reviewed and adjusted) that a child support order being enforced under this part should be reviewed, the State must, at the request of either parent subject to the order, or of a State child support enforcement agency, initiate a review of such order, and adjust such order, as appropriate, in accordance with the guidelines established pursuant to section 667(a) of this title.

- **(B)** Procedures to ensure that, beginning 5 years after October 13, 1988, or such earlier date as the State may select, the State must implement a process for the periodic review and adjustment of child support orders being enforced under this part under which the order is to be reviewed not later than 36 months after the establishment of the order or the most recent review, and adjusted, as appropriate, in accordance with the guidelines established pursuant to section 667(a) of this title, unless -

    - (i) in the case of an order with respect to an individual with respect to whom an assignment under section 602(a)(26) of this title is in effect, the State has

determined, in accordance with regulations of the Secretary, that such a review would not be in the best interests of the child and neither parent has requested review; and

- (ii) in the case of any other order being enforced under this part, neither parent has requested review.

- (C) Procedures to ensure that the State notifies each parent subject to a child support order in effect in the State that is being enforced under this part -

  - (i) of any review of such order, at least 30 days before the commencement of such review; and

  - (ii) of the right of such parent under subparagraph (B) to request the State to review such order; and

  - (iii) of a proposed adjustment (or determination that there should be no change) in the child support award amount, and such parent is afforded not less than 30 days after such notification to initiate proceedings to challenge such adjustment (or determination).

Title 42 § 666. Requirement of statutorily prescribed procedures to improve effectiveness

of child support enforcement [Amended by P.L. 104-193 Section 351 effective July 1, 1997]

(a) (10) Review and adjustment of support orders upon request. -

(A) 3-year cycle. -

(i) In general. -

Procedures under which every 3 years (or such shorter cycle as the State may determine), upon the request of either parent, or, if there is an assignment under part A of this subchapter, upon the request of the State agency under the State plan or of either parent, the State shall with respect to a support order being enforced under this part, taking into account the best interests of the child involved -

(I)

review and, if appropriate, adjust the order in accordance with the guide-lines established pursuant to section 667(a) of this title if the amount of the child support award under the order differs from the amount that would be awarded in accordance with the guidelines;

(II)

apply a cost-of-living adjustment to the order in accordance with a formula developed by the State; or

(III)

use automated methods (including automated comparisons with wage or State income tax data) to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the appropriate adjustment to the orders eligible for adjustment under any threshold that may be established by the State.

(ii) Opportunity to request review of adjustment. -

If the State elects to conduct the review under subclause (II) or (III) of clause (i), procedures which permit either party to contest the adjustment, within 30 days after the date of the notice of the adjustment, by making a request for review and, if appropriate, adjustment of the order in accordance with the child support guidelines established pursuant to section 667(a) of this title.

(iii) No proof of change in circumstances necessary in 3-year cycle review. -

Procedures which provide that any adjustment under clause (i) shall be made without a requirement for proof or showing of a change in circumstances.

(B) Proof of substantial change in circumstances necessary in request for review outside 3-year cycle. -

> Procedures under which, in the case of a request for a review, and if appropriate, an adjustment outside the 3-year cycle (or such shorter cycle as the State may determine) under clause (i), the State shall review and, if the requesting party demonstrates a substantial change in circumstances, adjust the order in accordance with the guidelines established pursuant to section 667(a) of this title.

(C) Notice of right to review. -

> Procedures which require the State to provide notice not less than once every 3 years to the parents subject to the order informing the parents of their right to request the State to review and, if appropriate, adjust the order pursuant to this paragraph. The notice may be included in the order.

U.S. Regulations

45 C.F.R. § 303.8 Review and adjustment of child support orders.

(Oct '93 - Oct '99 including time period of complaint)

(a) Definitions. For purposes of this section:

(1) Adjustment applies only to the child support provisions of the order, and means:

(i) An upward or downward change in the amount of child support based upon an application of State guidelines for setting and adjusting child support awards; and/or

(ii) Provision for the child's health care needs, through health insurance coverage or other means.

(2) Parent includes any custodial parent or non-custodial parent (or for purposes of requesting a review, any other person or entity who may have standing to request an adjustment to the child support order).

(3) Review means an objective evaluation, conducted through a proceeding before a court, quasi-judicial process, or administrative body or agency, of information necessary for application of the State's guidelines for support to determine:

(i) The appropriate support award amount; and

(ii) The need to provide for the child's health care needs in the order through health insurance coverage or other means.

(b) Plan for review and adjustment. (1) Effective on October 13, 1990, the State must have a written and publicly available plan indicating how and when child support orders in effect in the State will be periodically reviewed and adjusted. [underline added]

(2) During the period from October 13, 1990 through October 12, 1993, the State must, for orders being enforced under this chapter:

(i) Determine whether such orders should be reviewed, using the plan specified in paragraph (b)(1) of this section;

(ii) Initiate a review, in accordance with the plan, at the request of either parent subject to the order or of a IV - D agency;

(iii) Notify each parent subject to a child support order of any review of the order at least 30 calendar days before commencement of the review;

(iv) Adjust the order when the review determines that there should be a change in the child support award amount, or that health insurance should be required, as indicated by the review in accordance with the State's guidelines for support described in 302.56 of this chapter.

(v) Following any review, notify each parent subject to a child support order in effect in the State, of:

(A) Any adjustment or a determination that there should be no change in the order; and

(B) Each parent's right to initiate proceedings to challenge the adjustment or determination, either through pre-decision review, appeal, or administrative review, within at least 30 calendar days after the date of the notice.

(c) Review of child support orders.
Effective October 13, 1993 or an earlier date the State may select, the State must, when providing services under this chapter: [underline added]

(1) Have in effect and use a process for review and

adjustment of child support orders in effect in the State, including a process for challenging a proposed adjustment or determination.

(2) Notify each parent subject to a child support order in the State of the right to request a review of the order, and the appropriate place and manner in which the request should be made.

(3) Periodically publicize the right to request a review as part of its support enforcement services as required under §302.30 of this chapter and include notice of this right as part of information on IV - D services under §303.2(a)(2) of this part.

(4) Review child support orders at 36-month intervals after establishment of the order or the most recent review, unless:

(i) In a case in which there is an assignment as defined in 301.1 of this chapter, the State determines, in accordance with 303.8(c)(5) of this section, that a review would not be in the best interests of the child and neither parent has requested a review; or

(ii) In a case in which there is no such assignment of support rights to the State, neither parent has requested a review; or

(iii) In a case in which medical support rights are assigned under 42 CFR 433.146, but child support rights are not assigned to the State under §232.11 of this title or §471(a)(17) of the Act, the order requires the provision of health insurance coverage, and neither parent has requested a review; or

(5) Determine that a review of the child support order would not be in the best interests of a child if

there has been a finding of good cause as set forth at §§ 302.31(c) and 232.40 through 232.49 of this title or under 42 CFR 433.147(c), and the State or local IV - A, XIX, or IV - E agency has determined that support enforcement may not proceed without risk of harm to the child or caretaker relative.

(6) Notify or serve process upon each parent subject to a child support order in effect in the State of:

(i) Any review of such order at least 30 calendar days before commencement of the review, and

(ii) Any information necessary to conduct the review that each parent must provide and the date by which such information must be provided.

(7) Following any review, notify each parent subject to the child support order of:

(i) A proposed adjustment or a determination that there should be no adjustment in the order; and

(ii) Each parent's right to initiate proceedings to challenge the proposed adjustment or other determination, not less than 30 calendar days after the notice.

(8) Adjust the order, or determine that there should be no adjustment, as appropriate, in accordance with the State's guidelines for setting child support awards and paragraph (d) of this section.

(d) Basis for seeking adjustment.

(1) Inconsistency between the existent child support award amount and the amount of child support which results from application of the State guidelines must be an adequate basis, under State law,

for petitioning for an adjustment of an order in a IV - D case, unless:

(i) the inconsistency does not meet a reasonable quantitative standard established by the State, in accordance with paragraph (d)(2) of this section or

(ii) the inconsistency is due to the fact that the amount of the current child support award resulted from a rebuttal of the guideline amount and there has not been a change in the circumstances which resulted in the rebuttal of the guideline amount.

(2) The State may establish a reasonable quantitative standard based upon either a fixed dollar amount or percentage, or both, as a basis for determining whether an inconsistency between the existent child support award amount and the amount of support which results from application of the guidelines is adequate grounds for petitioning for adjustment of the order.

(3) The need to provide for the child's health care needs in the order, through health insurance or other means, must be an adequate basis under State law to petition for adjustment of an order to provide for the children's health care needs, regardless of whether an adjustment in the amount of child support is necessary. In no event shall the eligibility for or receipt of Medicaid be considered to meet the need to provide for the child's health care needs in the order.

(e) Timeframes for review and adjustment.

(1) In any case in which support rights are assigned to the State under 301.1 of this part, the State must determine, within 15 calendar days of October 13, 1993 or the date the child support order is 36 months old, whichever date occurs later, whether a

review should be conducted, as required under paragraph (c)(4) of this section. Subsequent determinations about whether to conduct a review must be made in accordance with paragraph (c)(4) of this section, at 36-month intervals based upon the date the child support order was adjusted or the date an order was entered determining that the child support order should not be adjusted, or, in any case in which a petition or motion for adjustment was not filed following a review, the date upon which the post-review challenge period ended.

(2) Within 15 calendar days of receipt of a request for a review, the State must determine whether a review should be conducted, as required under paragraph (c)(4) of this section.

(3) Within 180 calendar days of determining that a review should be conducted or locating the non-requesting parent, whichever occurs later, a State must:

(i) Send the notice or serve process required under paragraph (c)(6) of this section that a review will be conducted;

(ii) Conduct a review of the order;

(iii) Send the notice of the proposed adjustment or determination that there should be no adjustment as required under paragraph (c)(7) of this section; and

(iv) Adjust the order or determine that the order should not be adjusted in accordance with paragraph (c)(8) of this section.

(f) Interstate review and adjustment.

[omitted as not relevant to this case]

APPENDIX

42 U.S.C. § 1320a-2. Effect of failure to carry out State plan (Pub. L. No. 103-382, Title V, §555(a), 108 Stat. 4057 October 20, 1994):

In an action brought to enforce a provision of this chapter, such provision is not to be deemed unenforceable because of its inclusion in a section of this chapter requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in Suter v. Artist M., 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in Suter v. Artist M. that section 671(a)(15) of this title is not enforceable in a private right of action.

The Beazley Family

Post Office Box 17418
Long Beach, CA 90807-7418
Voice Mail & Fax: 877-850-4488
www.angelfire.com/ca2/Beazley

September 9, 2002

[see Law Clerk Distribution List, p. 3]
Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543

Re: Jenelle Beazley v. Federal, State, & County Employees, et al.

Dear Law Clerk:

This open letter to all law clerks is written to advise you, and opposing counsel, that our petition for a writ of certiorari in our civil rights case against 23 executive branch employees and the other parent, was served on September 9, 2002 with a copy of this letter appended as Exhibit G. A motion for injunctive relief against the assigned Ninth Circuit panel will also be served on September 14, 2002 for usurpation of power and breach of judicial duty by 9th Cir. Senior Judge Ferguson in failing to recuse himself from this case [28 U.S.C. § 455 (a)] because his independence and impartiality might be reasonably questioned in this matter, even if, subjectively he was conscious of no want of impartiality.

Given the volume of cases received by this Court, and the extremely low statistical chance of review by either represented or unrepresented parties, we are providing this letter to help ensure that this family receives both procedural and substantive due process from this Court, and its law clerks, by highlighting the primary reasons **why** this case is **ripe** and **entitled** to placement on the "discuss

list" for a conference; even if, the Chief Justice does not initially choose to place it for discussion.

(1) The fact that this is our second civil rights case and our fourth appearance before this Court in almost five years shows we have made a tremendous effort and enormous sacrifice to right a **grave injustice** committed against this family by government officials acting under color of law.

(2) The unpublished decision of the Ninth Circuit in this matter, to its credit, corrected the error of the district court by identifying at least six (6) defendants not barred from suit by either the res judicata preclusion or Rooker-Feldman abstention doctrines. However, the panel **illegally** ignored our surviving and legitimate constitutional claims against those six defendants for relief under the *Bivens* doctrine and Section 1983. That decision is **arbitrary** because *only* **one** inference (vs. two or more) can be drawn from the alleged facts and law; and a **usurpation of power** because it results in a denial of "trial by jury" on our constitutional (vs. Title IV-D) claims in violation of the Seventh Amendment. We believe this Court has an **obligation** (vs. discretion) to remedy an invasion of the Bill of Rights by an appellate panel, or else our implied constitutional and express statutory civil rights are unenforceable and meaningless.

(3) That arbitrary and unconstitutional unpublished decision of the panel also **conflicts** with this Court's unanimous opinion authored by Justice O'Connor in *Blessing v. Freestone,*[1] and fails to

[1] 520 U.S. 329, 341, 345, 348 (1997) authored by Justice O'Connor and a unanimous decision.

address two other published circuit decisions establishing the creation of an enforceable individual federal right by Congress to "review and adjustment" of child support orders and accounts within 180 days by the defendants under Title IV-D of the Social Security Act and related regulations.[2]

(4) Accordingly, we believe this case presents a fundamental civil rights issue with wide national impact from any resulting decision.[3] A decision by this Court in this one case will affect more than **19 million** Title IV-D families in the nation.

(5) At a minimum, we have asked the Court to consider issuing a *per curiam* opinion on-the-face of our constitutional claims, and if need be, full briefing and oral argument on our Title IV-D claims. We also believe the panel misstated and misapplied the res judicata and Rooker-Feldman doctrines to the remaining 18 defendants on our constitutional and Title IV-D claims who should all be individually subject to this civil rights action.

---

[2] Freestone v. Cowan, 68 F.3d 1141, 1149 (9th Cir. 1995) and Howe v. Ellenbecker, 8 F.3d 1258 at 1263 (8th Cir. 1993)

[3] The Center for Individual Rights, a public interest law firm located in Washington, DC, reviewed our draft petition on August 20, 2002 and concluded in an email posted by the family on the internet [http://www.angelfire.com/ca2/Beazley/Bader1email] that " ... I tend to **agree** that the Ninth Circuit **incorrectly decided** aspects of Beazley v. Superior Court of California, 2002 WL 461333 (9th Cir. Feb. 26, 2002), and Blessing v. Freestone, 520 U.S. 329 (1997) logically does not foreclose a child-support payor's ability to sue to vindicate his clearly-defined individual right to a child-support modification hearing under 42 U.S.C. 666(a)(10) & 45 CFR 303.8, ..." [emphasis added]

APPENDIX

Thank you for your consideration and we urge you to recommend placement given these exceptional circumstances, because this Court is the only remedy for unconstitutional and questionable conduct by the Ninth Circuit.

The Beazley Family

/s/ Dwight T. Beazley
Father and guardian ad litem

/s/ Jenelle D. Beazley
Daughter and Petitioner

Distribution List (34):

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APPENDIX

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• Matthew B. Berry
• Sigal P. Mandelker
• Neomi J. Rao
• Margaret A. Ryan
• Vince Chhabria
• Risa Goluboff
• Mirah Horowitz
• Michael Leiter

Copies to – [w/poster enclosure]
Attached Service List (8)

Justice O'Connor

Uphold The Beazleys' Civil Rights

and those of

19 million Title IV-D families

arising under

The U.S. Constitution & Laws

at conference on

Federal Damage Claims

thru

Trial by Jury

www.angelfire.com/ca2/Beazley

APPENDIX

No. _____

Supreme Court of the United States

Jenelle D. Beazley
Petitioner

By and through her guardian ad litem
Dwight T. Beazley

vs.

Superior Court of California, County of Orange, and
22 federal, state, and county employees
and the other parent

PROOF OF SERVICE

I, Dwight T. Beazley, do declare that on this date, September 9, 2002, as required by Supreme Court Rule 29 I have served the enclosed Open Letter to all Law Clerks with enclosure on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

Marcus M. Kerner Assistant United States Attorney U.S. Department of Justice 411 West Fourth Street, Suite 8000 Santa Ana, CA 92701	Stephen H. Zell Stephen J. Martino Madory, Zell, and Pleiss Suite 205 The Centre Building 17822 East 17th Street Tustin, CA 92780-2183
Christopher C. Foley Deputy Attorney General State of California 300 South Spring Street, Suite 500 Los Angeles, CA 90013	Norman J. Watkins William F. Bernard Lynberg & Watkins Suite 640 333 City Boulevard West Orange, CA 92868-5915
Karen S. Darling Deputy Attorney General State of California 300 South Spring Street, Fifth Floor Los Angeles, CA 90013-1204	Peter Nisson 17501 Irvine Boulevard, #9 Tustin, CA 92780
Della M. Welch Deputy County Counsel County of Orange 10 Civic Center Plaza, 4th Floor P.O. Box 1379 Santa Ana, CA 92702-1379	Solicitor General of the United States Room 5614 Department of Justice 950 Pennsylvania Avenue, N.W. Washington, D.C. 20530-0001

I declare under penalty of perjury that the foregoing is true and correct.
Executed on September 9, 2002

/s/ Dwight T. Beazley
Guardian Ad Litem
Appointed by
U.S. Magistrate Judge
Brian Q. Robbins
June 16, 2000

APPENDIX

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTTER
CLERK OF THE COURT

Area Code 202
479-3011

July 21, 2002

Mr. Dwight Theodore Beazley
P. 0. BOX 17418
Long Beach, CA 90807-7418

Re: Dwight Theodore Beazley
v. Superior Court of California, et
a1 .
Application No. 02A70

Dear Mr. Beazley:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice O'Connor, who on July 21, 2002, extended the time to and including September 11, 2002.

This letter has been sent to those designated on the attached notification list.

Sincerely,
William K. Sutter, Clerk

/s/ Loretta S. Ruffin
Assistant Clerk

* * * *

APPENDIX

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTTER **Area Code 202**
CLERK OF THE COURT **479-3011**

September 16, 2002

Dwight T. Beazley
Box 17418
Long Beach, CA 90807

RE: Dwight T. Beazley v. Superior Court of CA, et a1

Dear Mr. Beazley:

Returned are 10 of 11 copies of a petition for writ of certiorari submitted on 8 1/2 paper in the above-entitled case postmarked on September 9, 2002 and received on September 13, 2002, which fails to comply with the Rules of this Court.

If you intend to pay the $300 docket fee, the petition must be in booklet format and on paper that measures 6 1/8 by 9 1/4 inches. Rule 33.1 (a).

The appendix to the petition as required by Rule 14 must be in booklet format and on paper that measures 6 1 / 8 by 9 1/4 inches. Rule 33. 1 (a).

Rule 33.l (c) prohibits the use of spiral, plastic, metal or string bindings. Staples may be used, at least two, along the left margin covered with tape.

The petition must bear a suitable cover consisting of heavy paper, front and back. Rule 33.1 (e).

The cover of the petition must bear the title of the document. Rule 34.1 (e).

The text of the petition and appendix must be typeset Roman 11- point or larger type with 2-point or more leading between lines. The typeface of footnotes must be 9-point or larger with 2-point or more leading between lines. Please note that computer generated "Roman" font is smaller than traditional Roman type and you may need to increase the font size. Rule 33.l (b).

The petition should be single spaced.

All of the pages in the petition and appendix must contain margins of at least three-fourths of an inch on all sides. The text field, including footnotes, may not exceed 4 1/8 by 7 1/8 inches. Rule 33.1 (c).

The text of the document must appear on both sides of the pages. Rule 33.1 (b) .

Questions presented must appear on the very first page of the petition, alone Rule 14.1. (a).

The proof of service must be separate from the petition, not within it. See Rule 29.5.

Kindly correct the petition and appendix so that it complies in all respects with the Rules of the court and return it to this office promptly so that it may be docketed. Unless the petition is received by this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

Three copies of the corrected petition must be served on opposing counsel. Rule 29.3.

This office shall retain one copy of the petition and your money order in the amount of $300.00 in expectation of timely receipt of a properly prepared petition.

Enclosed are a copy of the Rules of the Court, a memorandum concerning the preparation of a paid petition in booklet format, and a sample petition.

Sincerely,
William K. Sutter, Clerk

/s/ Loretta S. Ruffin
Assistant Clerk
(202) 479 - 3039

Enclosures

cc: Stephen H. Zell

* * * *